

УДК: 336.64 ГРНТИ: 06.81.85

ACCOUNTING AND TAX RISKS OF ECONOMIC CONTRACTS

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The article deals with theoretical aspects of accounting and tax risks of economic contracts, namely the risks associated with the party to the contract and the risks associated with the terms of the contract and their reflection in accounting statements. The authors examine the sources of risks regulation, mechanisms for managing these types of risks as well as give the examples of risks relating to each group. The application of a unified approach by developing algorithms for eliminating risks for each group of contracts is considered reasonable. Summarizing the article, the authors state that to assess the practical importance of algorithms for eliminating and minimizing the risks of economic contracts it is necessary to analyze the possibilities of applying these algorithms in practice. Based on the results of the analysis, recommendations on the application of these algorithms should be made for the companies.

Keywords: accounting risks, tax risks, economic contracts.

БУХГАЛТЕРСКИЕ И НАЛОГОВЫЕ РИСКИ ХОЗЯЙСТВЕННЫХ ДОГОВОРОВ

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В статье рассмотрены теоретические аспекты бухгалтерских и налоговых рисков хозяйственных договоров, а именно риски, сопряжённые со стороной договора, и риски, сопряжённые с условиями договора и отражением этих условий в бухгалтерском учёте. Рассмотрены источники регулирования, механизмы управления данными видами рисков, а также приведены примеры рисков, относящихся к каждой группе. Отмечается целесообразность применения единого подхода путем разработки алгоритмов по устранению рисков для каждой группы договоров. Подводя итог статьи, авторы констатируют, что для оценки практической значимости алгоритмов по устранению и минимизации рисков хозяйственных договоров необходимо будет проанализировать возможности применения данных алгоритмов на практике. По результатам анализа должны быть составлены рекомендации для компаний по применению данных алгоритмов.

Ключевые слова: бухгалтерские риски, налоговые риски, хозяйственные договоры.

Introduction. In the current economic realities, the quantity and the level of risks which Russian organizations are exposed to are growing [1, p. 163], however, the measures taken to reduce the negative consequences at the state level are not enough [2, p. 138]. In accordance with the Russian literature economic activity is considered to be carried out by individual entrepreneur or legal entity regardless of the form of its ownership and profit or non-profit goals [3]. The economic activity of commercial organizations that are intended to gain profit in majority of cases is carried out by means of concluding and executing contracts. Therefore, the company's financial status is mainly resulted from the implications caused by economic contracts that it concludes.

Research. Considering today's regulation of business activity and increasing tax control the companies practice responsible attitude to the process of contracting. Moreover, the past ten years have witnessed the closer integration of global markets and, consequently, the increase in quantity of contracts concluded between Russian and foreign companies.

Discussion. It is important to keep in mind the principle of the Russian Civil Law in accordance with which the parties are able to conclude the contract prescribed or not prescribed by law or other legal acts [4]. The parties can include to the contract any provisions unless the content of the contract is determined by legal act as the obligatory. Accordingly, in order to eliminate any problems connected with the contract, contingent expenses and disputes with counterparty the contracting party

should examine the contract in detail, determine the risks and clearly specify the terms of the contract.

Neither Russian legislation, nor other legal acts clarify the meaning of accounting or tax risks. According to Mr. Konev, accounting risk appears when the records of accounting statements do not correspond to the actual state of company's business [5, p. 20]. Tax risks are principally connected with bringing the company to responsibility for the violation of tax legislation and also with the growth of the number of tax audits in regards to this company. Tax audits demand additional time for provision of clarifications with respect to financial records, their correlation or dynamics.

In any contracting relationships the company is primarily interested in profit that it can gain from the execution of a contract. The existence of tax and accounting risks can lead to additional expenses and decrease the profit. Therefore, the company's accountant and lawyer or special department that deals with drawing-up and analyzing the contract terms should identify and minimize the negative consequences in the form of tax and accounting risks connected with the contracts. It is reasonable to perform the preliminary analysis of the contract from the legal and economic points of view.

We believe that in order to simplify the companies' performance, in the first step, it is necessary to identify and classify accounting and tax risks of the economic contracts. In the second step, it is important to develop the methods or algorithm of risks elimination at all stages of contracting:

the stage of searching for the counterparty, the stage of development of contract terms and the stage of its recording and execution.

First of all, it is necessary to identify the most widespread risks of economic contracts, determine which contract type they are intrinsic to and what losses for the organization the existence of contract terms can cause. In order to fully identify the existing problems and find the ways to solve them it is necessary, firstly, to address the legal regulation of the relations in question. The Civil Code of the Russian Federation is the main act governing the procedure for concluding contract, its terms, obligations arising from the contract as well as the consequences of its modification and termination [6]. With regard to the analysis of accounting risks we can refer to the Federal Law "On Accounting" [7], federal and industry standards and some other acts. In order to analyze the tax consequences of contracts and reduce the tax burden it is necessary to apply the provisions of the Tax Code of the Russian Federation [8, 9] and certain regulations as well as recommendatory acts, for example, letters of the Ministry of Finance of the Russian Federation or the Federal Tax Service of the Russian Federation. In addition to the sources listed, the judicial practice and researchers' opinions should be taken into consideration.

In accordance with the Russian Civil Code the contract is recognized as the agreement of two or more persons on the establishment, modification or termination of civil rights and obligations [6]. "A contract from an accounting point of view is a legally formalized document the economic content of which defines contractual obligations" [10, p. 17].

Basing on analysis of scientific works of Russian authors we can divide the risks associated with economic contracts into two broad groups:

- Risks associated with the party to the contract;
- Risks associated with the terms of the contract and their reflection in accounting statements.

The risks associated with the party to the contract arise at the stage of searching a counterparty, while the risks associated with the terms of the contract arise at the stage of conclusion, recording and execution of the contract.

When concluding an economic contract a company may face adverse tax consequences related both to the characteristics of the counterparty and to the terms of the contract.

The website of the Federal Tax Service of Russia contains recommendations on the assessment of tax risks when dealing with counterparties. Thus, the Federal Tax Service of Russia advises to investigate the following features: "the lack of documentary confirmation of the authorities of the head of the counterparty company (his representative); the lack of copies of the identity document; the lack of information on the actual location of the counterparty, production and (or) retail space; the lack of information about the state registration of the counterparty in the Unified State Register of Legal Entities; the lack of clear evidence of the possibility of the counterparty's actual execution of the contract terms and also the existence of reasonable doubts in possibility to actually execute the terms of the contract taking into account the time needed for the delivery or production of goods, works or services" [11].

Ms. Kozyreva recommends the companies to draft a "dossier on their counterparties (with a preliminary assessment of potential counterparties) in order to find out whether they can actually fulfill their obligations under the contract and whether they have signs of "one-day" firms. In case of

contracting with such firms the tax benefit (reduction of profit tax due to recognition of expenses and application of VAT deductions) may be recognized as unjustified" [12, p. 78].

In order to reduce the risks of tax inspections, Ms. Perevalova advises not to conclude "the contracts with counterparties - resellers or intermediaries (chains of counterparties) without the rational economic or other reasons" [13, p. 18].

In addition, in cases prescribed in tax legislation a transaction may be considered as controlled, i.e. concluded between related parties. This entails certain consequences for the parties established by section V.1 of the Russian Tax Code including an increase in the profit tax in case it was calculated without taking into account the relations between counterparties [8]. In this regard, some authors recommend that companies do not enter into agreements with related parties in view of "saving on taxes" [14, p. 37] only or not to carry out "the sale of a fixed asset at a reduced price" [15, p. 50]. Such transactions can be brought to the attention of the Russian tax authorities which in case of detection of any law violations may assess additional value added tax (hereinafter – VAT) or income tax.

The use of special tax regimes by counterparties can also entail the problems in the form of tax costs, namely the lack of the ability for the organization to apply a deduction and reduce the VAT base in case the counterparty is exempt from paying this tax. At the same time, it should be noted that the developed countries, in the context of the state budget revenues, shift the tax burden from corporate taxes to individual taxes, and in the context of expenditures – they cut spending on public goods in favor of transfers to the population [16].

It is also advisable to pay attention to the cases of concluding a contract with an individual. In case a contracting person is not an individual entrepreneur (for example, a loan agreement is concluded) or a person is registered as an individual entrepreneur in accordance with the legislation of another country, the company may have obligations to withhold and transfer personal income tax and pay contributions to the Russian non-budget funds.

Special attention should be paid to the conclusion of the contracts with foreign companies. For instance, in case the place of sale is considered to be in Russia and the foreign company is not registered with the Russian tax authorities, the Russian company will become a VAT tax agent. Tax risks can also arise within a foreign company when contracting with a Russian company even if it does not have representative office in Russia or does not carry out activities through the Russian subsidiary. In accordance with the Organisation for Economic Co-operation and Development (hereinafter – OECD) Model Convention on Income and Capital [17], a foreign company's activities in Russia in the absence of its registration with the Russian tax authorities under certain conditions can lead to the settlement of a permanent establishment, and, consequently, the company shall be obliged to pay taxes to the Russian budget. For instance, the activities of a foreign company in Russia performed through its agent who has an authority to conclude contracts in the name of that company and habitually exercises that authority, under certain circumstances, lead to the settlement of a permanent establishment of this company in Russia. Thus, before working in Russia foreign companies should also analyze the possible risks associated with their activity that includes conclusion of contracts. An example is the so-called "Bloomberg Case" when Moscow Arbitration Court declared that the activities carried out by the company on the

territory of Russia had led to the settlement of a permanent establishment and recognized as legitimate the additional charge of 119.9 million Rubles of income tax by the Russian tax authorities [18]. It should be noted that although the Russian Federation is not a member of the OECD most Russian Double Tax Treaties with foreign governments are concluded on the basis of the OECD Model Convention on Income and Capital. In this regards, we believe that it is possible to apply the provisions of the OECD Model Convention on Income and Capital to assess the activities of foreign companies on the territory of the Russian Federation.

Thus, the problems for the company may arise at the stage of searching of a party. This encourages companies to pay more attention to the choice of a counterparty and spend certain resources on its examination.

As far as the stage of conclusion and execution of the contract is concerned, the tax and accounting risks that may arise are very diverse and depend, first of all, on the qualification of the contract and its terms. For example, an increase in the profit tax may be entailed by the absence of wording in the text of the contract that allows to make a definite conclusion on the economic justification of expenses and, accordingly, to reduce the tax base. Moreover, the Plenum of the Supreme Court of the Russian Federation noted in its Resolution No. 25 of June 23, 2015 that "when establishing the fact of understatement of tax base due to improper legal qualification of the taxpayer's transactions and assessing the tax consequences of their execution in the course of a tax audit, the tax authority, guided by subparagraph 3 paragraph 2 of Article 45 of the Tax Code of the Russian Federation, has the right to independently change the legal qualifications of transactions, the status and nature of the taxpayer's activities and apply to the court with the requirement to assess additional taxes" [19].

According to paragraph 1 of Article 9 of the Federal Law "On Accounting", every fact of economic life is subject to registration by a primary accounting document. Thus, incorrect registration of primary accounting documents leads to unreasonable reflection of an economic transaction in accounting. As a result, the tax base may be distorted and this may entail questions from the tax authorities in the future. The difficulties in the reflection of the contract in accounting statements can arise, for example, in case the terms of the contract are not fully defined or the subject of the contract is not common (for example, the subjects of commodity loan contract are not monetary funds) [20], or in case of introduction of additional terms that are rarely used in practice.

Often the companies trying to protect themselves from unfair actions of counterparties include uncommon terms to the contract. As a result, the rules of accounting used in the execution of this contract are changed and the non-observance of these rules can lead to certain difficulties. For example, a company includes to the contract the term based on which the ownership passes to the buyer after the payment and the transfer of the goods only. This term entails the special order of reflection of the transaction in accounting records as well as the special way of VAT calculation. As it is known, the object of VAT is the sale of goods, works or services. However, considering the situations similar to the one in the abovementioned example, the tax specialists and scientists come to the conclusion that the moment of shipment is more important than the moment of realization, i.e. the transfer of ownership [21, p. 58]. Thus, VAT is charged on the date of the shipment of goods. As Mr. Ulyanov notes, "the date of shipment for VAT calculation is

considered to be the date of registration of the first-time primary document drawn up either in the name of the buyer or in the name of the shipper" [22, p. 42].

The situations described above represent only a few risks that can arise as a result of concluding economic contracts.

As it was noted by Mr. Bychkov, "the tax consequences are entailed not by the civil transactions themselves but by the financial and economic operations performed in their execution and reflected in the accounting statements" [23, p. 10]. In order to avoid the unjustified expenses the most effective way is to identify and eliminate possible risks at the stage of development and conclusion of economic contracts. Moreover, the legally accurate recording of civil relations will restore the company from adverse tax consequences [24, p. 187] in the form of different qualification of the contract and its terms by the regulatory authorities [25, p. 24].

In this connection, it seems reasonable to work out the ways of solving the problems described above. Among the possible solutions, we can identify, first of all, the assessment of the counterparty [26, p. 40], developing the model provisions for inclusion to contracts, applying framework contracts and regulating the process of contractual work itself [27, p. 41]: adoption of internal acts, settlement of the decision-making process on concluding a contract by use of local acts.

Conclusion. As of today, there are numerous recommendations issued by the government and the researchers in order to avoid and minimize the tax and accounting risks of economic contracts. However, these works primarily analyze the risks in the light of the specific types and terms of contracts, certain types of counterparties and specific accounting policies of organizations. In this regard, it seems appropriate to develop the unified approach to the solution of above problems. First of all, it is necessary to systematize the risks and develop general and specific algorithms for their evaluation in accordance with this systematization. A separate algorithm can be developed for the use by the company at the stage of searching for a counterparty. This algorithm should take into account the party's business reputation, its characteristics and relationships with the company, as well as the application of special tax regimes.

The nature of the risks arising at the stage of conclusion and execution of the contract is closely associated to the characteristics of this contract. Therefore, it is proposed to systematize the risks by groups of contracts, for example, depending on the subject of the contract (goods, works or services) or its consequences (transfer of ownership, transfer of possession, etc.), and, subsequently, to develop the algorithm for eliminating the risks for each group of contracts. It seems that algorithms can be implemented in the form of step-by-step methodologies, question-answers or in the form of a computer program following the example of the "Contract Designer" in the "ConsultantPlus" Legal Reference System.

To assess the practical importance of algorithms for eliminating and minimizing the risks of economic contracts it will be necessary to analyze the possibilities of applying these algorithms in practice. Based on the results of the analysis, the recommendations should be issued for companies to apply these algorithms.

The existence of the above algorithms will help companies to reduce the time required to analyze contracts and develop their terms as well as to reduce the risks associated with contracts execution.

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Reserved 16.06.2018